

## State of Utah

# FIVE-YEAR NOTICE OF REVIEW AND STATEMENT OF CONTINUATION

DAR file no:

Date filed:

Utah Admin.

R307-401

Time filed:

Code ref. (R no.):

1. Agency: Environmental Quality/Air Quality

Room no.:

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(Interested persons may inspect this filing at the above address or at DAR between 8:00 a.m. and 5:00 p.m. on business days.)

**2. Title of rule or section (catchline):**

Permits: Notice of Intent and Approval Order.

**3. A concise explanation of the particular statutory provisions under which the rule is enacted and how these provisions authorize or require the rule:**

19-2-108 states that "The board shall require that notice be given to the executive secretary by any person planning to construct a new installation which will or might reasonably be expected to be a source or indirect source of air pollution or to make modifications to an existing installation which will or might reasonably be expected to increase the amount of or change the character or effect of air contaminants discharged..." R307-401 sets forth the requirements that the owner or operator of a source of air pollution must address in giving notice to the executive secretary.

**4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule: See email file sent separately.****5. A reasoned justification for continuation of the rule, including reasons why the agency disagrees with comments in opposition to the rule, if any:**

As specified in 19-2-108, the Air Quality Board shall require that a new or modifying source of air pollution notify the executive secretary when intending to construct a new source or modify and existing source. R307-401 is the Board's rule to require the notice, specify its contents, and determine the timetable for the executive secretary's response to that notice.

**6. Indexing information - keywords (maximum of four, in lower case):**

air pollution, permits, approval order

**7.****Attach an RTF document containing the text of this rule change (filename):**



There is currently a document associated with this filing.

Rule Text

**To the agency:** Information requested on this form is required by Section 63-46a-9. Incomplete forms will be returned to the agency for completion, possibly delaying the effective date.

### AGENCY AUTHORIZATION

Agency head or designee, and title:	M. Cheryl Heying Planning Branch Manager	Date (mm/dd/yyyy):	6/1/2006
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Non Printable

*m. Cheryl Heying*  
5-25-06



**4. A summary of written comments received during and since the last five-year review of the rule from interested persons supporting or opposing the rule:**

No comments have been received outside the comment period when R307-401 has been amended. The only amendment since the last review was a Repeal and Re-enact, DAR# 28325, published in the Utah State Bulletin on December 1, 2005; many comments were received at that time and are included here. COMMENT 1): Some of the permitting definitions that are currently located in R307-101-2 have been moved to R307-401. Changes were made to those definitions that could affect the scope of the rule. The purpose of these changes is not clear. It is also not clear why corresponding definitions were not changed in R307-101-2. It is confusing to have slightly different definitions in the two rules. RESPONSE: One of the goals of the rewrite of R307-401 was to separate requirements that are part of Utah's comprehensive new source review program (minor NSR) from those that are coming from the federal major source NSR program (major NSR). In general, R307-401 uses terms that were adopted as part of the major NSR program so that there is some consistency within the permitting program. The major NSR terms have been used for the broader range of sources and pollutants that are covered under the minor NSR program. The proposed changes to definitions mirror UDAQ's current interpretation of R307-401 as it applies to the minor NSR program, and the changes reflect the broader applicability of the minor NSR program. There were some changes to the definitions to better reflect how these terms have been used in the minor NSR program. UDAQ does not believe that these changes in definitions will affect how the minor NSR program has been historically implemented. In addition, when these definitions were moved to 401 they were realigned with the major NSR definitions whenever possible. Over the years, UDAQ's definitions that were originally based on the federal definitions have been modified to improve grammar or readability. Because the PSD permitting program in R307-405 will now incorporate the federal definitions by reference, UDAQ believed that it was important to match those definitions, to the degree possible, with the corresponding definitions in R307-401. This is important because the minor source and major source programs must operate in parallel. UDAQ does not believe that these changes will affect how the minor NSR program has historically been implemented. The comments and responses on specific definitions follow: a) "Actual emissions" – The term "pollutant" was changed to "air contaminant" thereby increasing the scope of the definition. The reference to a two-year period was changed to a 24-month period. The provisions that apply to electric utility steam generating units were removed. RESPONSE: These changes do not affect how the rule is implemented. A modification requires PSD review if the increase in actual emissions is significant. For this reason, the term "actual emissions" is very critical to the PSD program. However, under the minor NSR program, the term "actual emissions" is not used to determine whether a modification requires an approval order. Instead, R307-401 requires an approval order if a change is made that "will or might reasonably be expected to increase the amount of or change the effect of, or the character of, air contaminants discharged..." The term "actual emissions" is used only to determine when a source is considered "de minimis" (see proposed R307-401-9). Within this context, language that is specific to electric utility steam generating units and to pollutants that are regulated under the Clean Air Act has no meaning, and was therefore removed from the definition as part of the overall rule clean up. The final point raised about the change from two year period to 24-month period will have no effect within the context of determining if a source is de minimis because a source must continue to stay below the cutoff level in the future to maintain its status as a de minimis source. b) "Construction" – the definition has minor editorial changes. Why are these changes made here and not in the corresponding definition in R307-101? RESPONSE: As described above, the changes were made to align the definition with the language that is incorporated by reference in the PSD rule. The changes were not made to the corresponding definition in R307-101-2 because that definition



applies to the major NSR program for nonattainment areas in R307-403. UDAQ has delayed revisions to R307-403 because any changes to that rule are complicated by uncertainties of how NSR will apply for the new NAAQS. UDAQ plans to bring R307-403 to the Board at a later date to address the NSR reform provisions and the new NAAQS and will review the definitions in R307-101-2 at that time to make them consistent with the federal language. c) "Emissions unit" – the definition was changed to refer to emissions of "air contaminants" rather than "pollutants subject to regulation under the Clean Air Act." This expands the scope of the definition.

RESPONSE: R307-401 applies broadly to "installations" that emit air contaminants. The term "emissions unit" is used in definitions that were adopted as part of the PSD program. UDAQ has never interpreted the reference to pollutants regulated under the Clean Air Act to limit the applicability of the minor NSR program that comes directly from the Utah Air Conservation Act. The change merely clarifies how the definition has been used for the minor NSR program. d)

"Fugitive emissions" – the definition has been narrowed to include only emissions which could not reasonably pass through a stack. The current definition describes fugitive emissions as "emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack..." RESPONSE: The definition was changed to match the language that is incorporated in the PSD rule. Within the context of R307-401, there is no change in the implementation of the rule because of how the term is used. e) "Potential to emit" - the definition was changed to refer to emissions of "air contaminants" rather than "pollutants subject to regulation under the Clean Air Act." This expands the scope of the definition. RESPONSE: R307-401 applies broadly to "installations" that emit air contaminants. The term potential to emit is used in definitions that were adopted as part of the PSD program. UDAQ has never interpreted the reference to pollutants regulated under the Clean Air Act to limit the applicability of the minor NSR program that comes directly from the Utah Air Conservation Act. The change merely clarifies how the definition has been used for the minor NSR program. f) "Secondary emissions" – the definition was changed to remove language that "secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions." This expands the scope of the definition. RESPONSE: The definition was changed to match the definition that was incorporated by reference in the PSD rule. The specific language described above came originally from the major NSR rule for nonattainment areas. It is not clear why this definition is different in that rule. However, in the context of R307-401 there is no effect on how the program is implemented because the term "secondary emissions" is used only in the definition of potential to emit, that states "Secondary emissions do not count in determining the potential to emit of a stationary source." Within this context, aligning the definition with the PSD definition does not change how the rule is implemented. g) "Best available control technology" and "indirect source" – these definitions had minor revisions. RESPONSE: The definitions were aligned with the definitions in the PSD rule. The changes were very minor and do not affect implementation of the rule. h) "Stationary source" and "building, structure, facility, or installation" - these are new definitions. They refer to air contaminants and would expand the scope of the rule. RESPONSE: R307-101-2 contains a definition for the term "source" that combines the two terms "stationary source" and "building, structure, facility, or installation" that are used in the PSD rule. In this rulemaking, the terms were separated to match the PSD rule, and this does not affect the usage of these terms. R307-401 clearly applies to installations that emit "air contaminants" rather than being limited to pollutants that are regulated under the Clean Air Act. The applicability language comes directly from the Utah Air Conservation Act. The PSD program, on the other hand, applies only to the narrower group of pollutants. UDAQ has used this broader authority in the minor NSR program to regulate air contaminants that would have a local impact, but are not yet addressed nationally. UDAQ recommends making some changes to the proposed language in R307-401 to clarify that an approval order is required for "installations" rather than "stationary sources" to conform with the language in the Utah Air Conservation Act.



This will ensure that the proposed rule change does not inadvertently change the applicability language that is currently used in R307-401. 2) COMMENT: In a number of places in proposed R307-401 and R307-405, when specifying what the executive secretary is to do, the term "shall" has been replaced by the term "will." Does this imply that the executive secretary is not required to take the actions specified in the rule? RESPONSE: The term was changed to reflect the legal authority of the rule. The State cannot regulate itself, and therefore the use of the term "shall" is not appropriate and does not have any greater meaning than the term "will." The rules are intended to regulate sources. However, it is important to describe in the rule how the executive secretary will review applications, seek public comment, etc. If the executive secretary does not follow the process established in the rule, there is not an enforcement action (penalties, etc.) against the executive secretary. However, the underlying statutes (Air Conservation Act, Administrative Procedures Act, etc.) would govern the actions of the State. If the language was adopted into the federal SIP, then EPA could also take action against the State, such as withdrawing approval of the permitting program. If the executive secretary does not follow the established procedures, then any action could be challenged as being an arbitrary implementation of the rule. So, in summary, the terms were changed to better reflect the legal authority of the rule, but the use of the term "will" does not change the legal obligation of the executive secretary to follow the established procedures. 3) COMMENT: In proposed R307-401-14(3), "his representative" should be changed to the "executive secretary's representative," consistent with many other parts of the rules. RESPONSE: The change has been made as recommended. 4) COMMENT: Cross references in R307-401-15(1)(b) and R307-401-16(2) need to be corrected. RESPONSE: The change has been made as recommended. 5) COMMENT: References to temporary relocation in R307-401-9(4) and R307-401-17 (last sentence) need to be updated from R307-401-16 to R307-401-17. RESPONSE: The change has been made as recommended. 6) COMMENT: The requirement in current R307-401-4 to send a copy of the NOI to EPA, local officials, FLMs or Indian Governing Bodies has been removed. RESPONSE: The language referenced by the commentor came from the PSD SIP requirements in 40 CFR 51.166(q) and has been incorporated by reference into R307-405-18. Although the language applied broadly to all NOIs in the current rule, in practice UDAQ has not followed this procedure for minor sources and minor modifications. With the change in the rule, the minor NSR program will operate under Utah public review and comment procedures. There will be no change to the current public notification practices. 7) COMMENT: Utah needs to clarify whether removing the requirement for Board approval of permits that consume more than 50% of the increment would impact maintenance of the PSD increments and to state that the provisions is not required by federal regulations. RESPONSE: The current provision in R307-401-6(3) that requires approval by the Board for a permit that consumes more than 50% of the increment is not required by federal regulations. Removing this provision will not affect maintenance of the PSD increments because 40 CFR 52.21(k), incorporated by reference in R307-405-12, requires that the proposed source or modification would not cause or contribute to air pollution in violation of the increment. Approval by the Board was an additional administrative step that did not directly affect the amount of increment consumed by a project. 8) COMMENT: The current rule does not allow a small source exemption for any source that has a potential to emit that would make it a major stationary source. It appears that this provision provides a necessary limit on sources eligible for the exemption and should be retained. RESPONSE: The small source exemption in the proposed R307-401-9 applies to sources with actual emissions that are less than 5 tons/year for any air contaminant or 500 pounds/year of any HAP. These levels are well below the 100 tons/year PTE cutoff for major sources as defined in R307-101-2. It is unlikely that a source with such low actual emissions would have a high PTE. However, if such a source did exist, R307-401-9 requires the source to submit a NOI within 6 months if the source emits more than 5 tons/year of any air contaminant in any year. In addition, the major source permitting requirements in R307-405 and R307-403 are not affected by this exemption, so a major source or



major modification would still be required to obtain a permit. The reference to major sources was removed from the small source exemption because it did not provide any added regulatory value, and the definition of major source is complex. 9) COMMENT: EPA recommends that small source exemption registry be made mandatory instead of voluntary to maintain an accurate registry and emissions inventory. RESPONSE: The small source registry is essentially a list of all of the sources that are not required to receive an approval order. Under Utah's statute, any source of air pollution could potentially be required to obtain an approval order, but UDAQ has never required extremely small sources, such as an auto parts degreaser at a repair shop or a homeowner's lawnmower, to obtain an approval order. It is not possible to maintain a complete registry because the list of sources would range from those with 4.99 tons/year of emissions to those with 1 pound/year of emissions. EPA does not require a similar registry for national programs. Instead, the national programs focus on the sources that meet the applicability requirements. Under Utah's rules, and national regulations, a source faces enforcement action if they do not comply with a rule if they meet the applicability requirements. UDAQ has maintained a registry in the non-attainment area, even though it is not complete. However, the registry has been useful for compliance staff because they can determine whether an applicability review has already been completed for a source. UDAQ has found that many sources in attainment areas are already requesting documentation from UDAQ that they qualify for the small source exemption for their own tracking purposes. UDAQ believes that sources will continue to voluntarily register with the state to avoid unnecessary compliance scrutiny, and we will no longer have a regulatory requirement that is not practicably enforceable for very small sources.



**R307. Environmental Quality, Air Quality.****R307-401. Permit: New and Modified Sources.****R307-401-1. Purpose.**

This rule establishes the application and permitting requirements for new installations and modifications to existing installations throughout the State of Utah. Additional permitting requirements apply to larger installations or installations located in nonattainment or maintenance areas. These additional requirements can be found in R307-403, R307-405, R307-406, R307-420, and R307-421. Modeling requirements in R307-410 may also apply. Each of the permitting rules establishes independent requirements, and the owner or operator must comply with all of the requirements that apply to the installation. Exemptions under R307-401 do not affect applicability of the other permitting rules.

**R307-401-2. Definitions.**

(1) The following additional definitions apply to R307-401.

"Actual emissions" (a) means the actual rate of emissions of an air contaminant from an emissions unit, as determined in accordance with paragraphs (b) through (d) below.

(b) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the air contaminant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The executive secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(c) The executive secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(d) For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

"Best available control technology" means an emissions limitation (including a visible emissions standard) based on the maximum degree of reduction for each air contaminant which would be emitted from any proposed stationary source or modification which the executive secretary, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 40 CFR parts 60 and 61. If the executive secretary determines that

technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof, may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation, and shall provide for compliance by means which achieve equivalent results.

"Building, structure, facility, or installation" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same Major Group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

"Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) that would result in a change in emissions.

"Emissions unit" means any part of a stationary source that emits or would have the potential to emit any air contaminant.

"Fugitive emissions" means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Indirect source" means a building, structure, facility or installation which attracts or may attract mobile source activity that results in emission of a pollutant for which there is a national standard.

"Potential to emit" means the maximum capacity of a stationary source to emit an air contaminant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Secondary emissions" means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. Secondary emissions include emissions from any offsite support facility which would not be constructed



or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

"Stationary source" means any building, structure, facility, or installation which emits or may emit an air contaminant.

### **R307-401-3. Applicability.**

(1) R307-401 applies to any person intending to:

- (a) construct a new installation which will or might reasonably be expected to become a source or an indirect source of air pollution, or
- (b) make modifications or relocate an existing installation which will or might reasonably be expected to increase the amount or change the effect of, or the character of, air contaminants discharged, so that such installation may be expected to become a source or indirect source of air pollution, or
- (c) install a control apparatus or other equipment intended to control emissions of air contaminants.

(2) R307-403, R307-405 and R307-406 may establish additional permitting requirements for new or modified sources.

(a) Exemptions contained in R307-401 do not affect applicability or other requirements under R307-403, R307-405 or R307-406.

(b) Exemptions contained in R307-403, R307-405 or R307-406 do not affect applicability or other requirements under R307-401, unless specifically authorized in this rule.

### **R307-401-4. General Requirements.**

The general requirements in (1) through (3) below apply to all new and modified installations, including installations that are exempt from the requirement to obtain an approval order.

(1) Any control apparatus installed on an installation shall be adequately and properly maintained.

(2) If the executive secretary determines that an exempted installation is not meeting an approval order or State Implementation Plan limitation, is creating an adverse impact to the environment, or would be injurious to human health or welfare, then the executive secretary may require the owner or operator to submit a notice of intent and obtain an approval order in accordance with R307-401-5 through R307-401-8. The executive secretary will complete an appropriate analysis and evaluation in consultation with the owner or operator before determining that an approval order is required.

(3) Low Oxides of Nitrogen Burner Technology.

(a) Except as provided in (b) below, whenever existing fuel combustion burners are replaced, the owner or operator shall install low oxides of nitrogen burners or equivalent oxides of nitrogen

controls, as determined by the executive secretary, unless such equipment is not physically practical or cost effective. The owner or operator shall submit a demonstration that the equipment is not physically practical or cost effective to the executive secretary for review and approval prior to beginning construction.

(b) The provisions of (a) above do not apply to non-commercial, residential buildings.

### **R307-401-5. Notice of Intent.**

(1) Except as provided in R307-401-9 through R307-401-17, any person subject to R307-401 shall submit a notice of intent to the executive secretary and receive an approval order prior to initiation of construction, modification or relocation. The notice of intent shall be in a format specified by the executive secretary.

(2) The notice of intent shall include the following information:

(a) A description of the nature of the processes involved; the nature, procedures for handling and quantities of raw materials; the type and quantity of fuels employed; and the nature and quantity of finished product.

(b) Expected composition and physical characteristics of effluent stream both before and after treatment by any control apparatus, including emission rates, volume, temperature, air contaminant types, and concentration of air contaminants.

(c) Size, type and performance characteristics of any control apparatus.

(d) An analysis of best available control technology for the proposed source or modification. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, the owner or operator of the source shall consider EPA Control Technique Guidance (CTG) documents and Alternative Control Technique documents that are applicable to the source. Best available control technology shall be at least as stringent as any published CTG that is applicable to the source.

(e) Location and elevation of the emission point and other factors relating to dispersion and diffusion of the air contaminant in relation to nearby structures and window openings, and other information necessary to appraise the possible effects of the effluent.

(f) The location of planned sampling points and the tests of the completed installation to be made by the owner or operator when necessary to ascertain compliance.

(g) The typical operating schedule.

(h) A schedule for construction.

(i) Any plans, specifications and related information that are in final form at the time of submission of notice of intent.

(j) Any additional information required by:

(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;



- (ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);
- (iii) R307-406, Visibility;
- (iv) R307-410, Emissions Impact Analysis;
- (v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties; or
- (vi) R307-421, Permits: PM10 Offset Requirements in Salt Lake County and Utah County.
- (k) Any other information necessary to determine if the proposed source or modification will be in compliance with Title R307.
- (3) Notwithstanding the exemption in R307-401-9 through 16, any person that is subject to R307-403, R307-405, or R307-406 shall submit a notice of intent to the executive secretary and receive an approval order prior to initiation of construction, modification, or relocation.

#### **R307-401-6. Review Period.**

- (1) Completeness Determination. Within 30 days after receipt of a notice of intent, or any additional information necessary to the review, the executive secretary will advise the applicant of any deficiency in the notice of intent or the information submitted.
- (2) Within 90 days of receipt of a complete application including all the information described in R307-401-5, the executive secretary will
  - (a) issue an approval order for the proposed construction, installation, modification, relocation, or establishment pursuant to the requirements of R307-401-8, or
  - (b) issue an order prohibiting the proposed construction, installation, modification, relocation or establishment if it is deemed that any part of the proposal is inadequate to meet the applicable requirements of R307.
- (3) The review period under (2) above may be extended by up to three 30-day extensions if more time is needed to review the proposal.

#### **R307-401-7. Public Notice.**

- (1) Issuing the Notice. Prior to issuing an approval or disapproval order, the executive secretary will advertise intent to approve or disapprove in a newspaper of general circulation in the locality of the proposed construction, installation, modification, relocation or establishment.
- (2) Opportunity for Review and Comment.
  - (a) At least one location will be provided where the information submitted by the owner or operator, the executive secretary's analysis of the notice of intent proposal, and the proposed approval order conditions will be available for public inspection.
  - (b) Public Comment.
    - (i) A ten-day public comment period will be established.
    - (ii) The public comment period in (i) above will be increased to 30 days for any source that is:

- (A) subject to the requirements of R307-405, Permits: Major Sources in Attainment or Unclassified Areas,
  - (B) subject to the requirements of R307-406, Visibility,
  - (C) subject to the requirements of R307-415, Operating Permit Requirements;
  - (D) a synthetic minor source in accordance with R307-415-4(6);
  - (E) located in a nonattainment area or a maintenance area for any pollutant; or
  - (F) subject to any standard or requirement of 42 U.S.C. 7411 or 7412.
  - (iii) A request to extend the length of the comment period, up to 30 days, may be submitted to the executive secretary:
    - (A) within 10 days of the date the notice in (1) above is published for comment periods established under (i), or
    - (B) within 15 days of the date the notice in (1) above is published for comment periods established under (ii).
  - (iv) Public Hearing. A request for a hearing on the proposed approval or disapproval order may be submitted to the executive secretary:
    - (A) within 10 days of the date the notice in (1) above is published for comment periods established under (i) above, or
    - (B) within 15 days of the date the notice in (1) above is published for comment periods established under (ii) above.
  - (v) The hearing will be held in the area of the proposed construction, installation, modification, relocation or establishment.
  - (vi) The public comment and hearing procedure shall not be required when an order is issued for the purpose of extending the time required by the executive secretary to review plans and specifications.
  - (3) The executive secretary will consider all comments received during the public comment period and at the public hearing and, if appropriate, will make changes to the proposal in response to comments before issuing an approval order or disapproval order.
- #### **R307-401-8. Approval Order.**
- (1) The executive secretary will issue an approval order if the following conditions have been met:
    - (a) The degree of pollution control for emissions, to include fugitive emissions and fugitive dust, is at least best available control technology. When determining best available control technology for a new or modified source in an ozone nonattainment or maintenance area that will emit volatile organic compounds or nitrogen oxides, best available control technology shall be at least as stringent as any Control Technique Guidance document that has been published by EPA that is applicable to the source.
    - (b) The proposed installation will meet the applicable requirements of:



(i) R307-403, Permits: New and Modified Sources in Nonattainment Areas and Maintenance Areas;

(ii) R307-405, Permits: Major Sources in Attainment or Unclassified Areas (PSD);

(iii) R307-406, Visibility;

(iv) R307-410, Emissions Impact Analysis;

(v) R307-420, Permits: Ozone Offset Requirements in Davis and Salt Lake Counties;

(vi) R307-210, National Standards of Performance for New Stationary Sources;

(vii) National Primary and Secondary Ambient Air Quality Standards;

(viii) R307-214, National Emission Standards for Hazardous Air Pollutants;

(ix) R307-110, Utah State Implementation Plan; and

(x) all other provisions of R307.

(2) The approval order will require that all pollution control equipment be adequately and properly maintained.

(3) Receipt of an approval order does not relieve any owner or operator of the responsibility to comply with the provisions of R307 or the State Implementation Plan.

(4) To accommodate staged construction of a large source, the executive secretary may issue an order authorizing construction of an initial stage prior to receipt of detailed plans for the entire proposal provided that, through a review of general plans, engineering reports and other information the proposal is determined feasible by the executive secretary under the intent of R307. Subsequent detailed plans will then be processed as prescribed in this paragraph. For staged construction projects the previous determination under R307-401-8(1) and (2) will be reviewed and modified as appropriate at the earliest reasonable time prior to commencement of construction of each independent phase of the proposed source or modification.

(5) If the executive secretary determines that a proposed stationary source, modification or relocation does not meet the conditions established in (1) above, the executive secretary will not issue an approval order.

#### **R307-401-9. Small Source Exemption.**

(1) A small stationary source is exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following conditions are met.

(a) its actual emissions are less than 5 tons per year per air contaminant of any of the following air contaminants: sulfur dioxide, carbon monoxide, nitrogen oxides, PM<sub>10</sub>, ozone, or volatile organic compounds;

(b) its actual emissions are less than 500 pounds per year of any hazardous air pollutant and less than 2000 pounds per year of any combination of hazardous air pollutants;

(c) its actual emissions are less than 500 pounds per year of any air contaminant not listed in

(a) (or (b) above and less than 2000 pounds per year of any combination of air contaminants not listed in (a) or (b) above.

(d) Air contaminants that are drawn from the environment through equipment in intake air and then are released back to the environment without chemical change, as well as carbon dioxide, nitrogen, oxygen, argon, neon, helium, krypton, xenon should not be included in emission calculations when determining applicability under (a) through (c) above.

(2) The owner or operator of a source that is exempted from the requirement to obtain an approval order under (1) above shall no longer be exempt if actual emissions in any subsequent year exceed the emission thresholds in (1) above. The owner or operator shall submit a notice of intent under R307-401-5 no later than 180 days after the end of the calendar year in which the source exceeded the emission threshold.

(3) **Small Source Exemption – Registration.** The executive secretary will maintain a registry of sources that are claiming an exemption under R307-401-9. The owner or operator of a stationary source that is claiming an exemption under R307-401-9 may submit a written registration notice to the executive secretary. The notice shall include the following minimum information:

(a) identifying information, including company name and address, location of source, telephone number, and name of plant site manager or point of contact;

(b) a description of the nature of the processes involved, equipment, anticipated quantities of materials used, the type and quantity of fuel employed and nature and quantity of the finished product;

(c) identification of expected emissions;

(d) estimated annual emission rates;

(e) any control apparatus used; and

(f) typical operating schedule.

(4) An exemption under R307-401-9 does not affect the requirements of R307-401-17, Temporary Relocation.

#### **R307-401-10. Source Category Exemptions.**

The following source categories described in (1) through (5) below are exempted from the requirement to obtain an approval order. The general provisions in R307-401-4 shall apply to these sources.

(1) Fuel-burning equipment in which combustion takes place at no greater pressure than one inch of mercury above ambient pressure with a rated capacity of less than five million BTU per hour using no other fuel than natural gas or LPG or other mixed gas that meets the standards of gas distributed by a utility in accordance with the rules of the Public Service Commission of the State of Utah, unless there are emissions other than combustion products.

(2) Comfort heating equipment such as boilers, water heaters, air heaters and steam generators with a rated capacity of less than one million BTU per hour if fueled only by fuel oil numbers 1 – 6,



(3) Emergency heating equipment, using coal or wood for fuel, with a rated capacity less than 50,000 BTU per hour.

(4) Exhaust systems for controlling steam and heat that do not contain combustion products.

#### **R307-401-11. Replacement-in-Kind Equipment.**

(1) Applicability. Existing process equipment or pollution control equipment that is covered by an existing approval order or State Implementation Plan requirement may be replaced using the procedures in (2) below if:

(a) the potential to emit of the process equipment is the same or lower;

(b) the number of emission points or emitting units is the same or lower;

(c) no additional types of air contaminants are emitted as a result of the replacement;

(d) the process equipment or pollution control equipment is identical to or functionally equivalent to the replaced equipment;

(e) the replacement does not change the basic design parameters of the process unit or pollution control equipment;

(f) the replaced process equipment or pollution control equipment is permanently removed from the stationary source, otherwise permanently disabled, or permanently barred from operation;

(g) the replaced process equipment or pollution control equipment does not trigger New Source Performance Standards or National Emissions Standards for Hazardous Air Pollutants under 42 U.S.C. 7411 or 7412; and

(h) the replacement of the control apparatus or process equipment does not violate any other provision of Title R307.

(2) Replacement-in-Kind Procedures.

(a) In lieu of filing a notice of intent under R307-401-5, the owner or operator of a stationary source shall submit a written notification to the executive secretary before replacing the equipment. The notification shall contain a description of the replacement-in-kind equipment, including the control capability of any control apparatus and a demonstration that the conditions of (1) above are met.

(b) If the replacement-in-kind meets the conditions of (1) above, the executive secretary will update the source's approval order and notify the owner or operator. Public review under R307-401-7 is not required for the update to the approval order.

(3) If the replaced process equipment or pollution control equipment is brought back into operation, it shall constitute a new emissions unit.

#### **R307-401-12. Reduction in Air Contaminants.**

(1) Applicability. The owner or operator of a stationary source of air contaminants that reduces or eliminates air contaminants is exempt from the approval order requirements of R307-401-5 through 8 if:

(a) the project does not increase the potential to emit of any air contaminant or cause emissions of any new air contaminant, and

(b) the executive secretary is notified of the change and the reduction of air contaminants is made enforceable through an approval order in accordance with (2) below.

(2) Notification. The owner or operator shall submit a written description of the project to the executive secretary no later than 60 days after the changes are made. The executive secretary will update the source's approval order or issue a new approval order to include the project and to make the emission reductions enforceable. Public review under R307-401-7 is not required for the update to the approval order.

#### **R307-401-13. Plantwide Applicability Limits.**

A plantwide applicability limit under R307-405-21 does not exempt a stationary source from the requirements of R307-401.

#### **R307-401-14. Used Oil Fuel Burned for Energy Recovery.**

(1) Definitions.

"Boiler" means boiler as defined in R315-1-1 that incorporates by reference the term "boiler" in 40 CFR 260.10, 2000 ed., as amended by 67 FR 2962, January 22, 2002.

"Used Oil" is defined as any oil that has been refined from crude oil, used, and, as a result of such use contaminated by physical or chemical impurities.

(2) Boilers burning used oil for energy recovery are exempted from the requirement to obtain an approval order in R307-401-5 through 8 if the following requirements are met:

(a) the heat input design is less than one million BTU/hr;

(b) contamination levels of all used oil to be burned do not exceed any of the following values:

(i) arsenic - 5 ppm by weight,

(ii) cadmium - 2 ppm by weight,

(iii) chromium - 10 ppm by weight,

(iv) lead - 100 ppm by weight,

(v) total halogens - 1,000 ppm by weight,

(vi) Sulfur - 0.50% by weight; and

(c) the flash point of all used oil to be burned is at least 100 degrees Fahrenheit.

(3) Testing. The owner or operator shall test each load of used oil received or generated as directed by the executive secretary to ensure it meets these requirements. Testing may be performed by the owner/operator or documented by test reports from the used fuel oil vendor. The flash point shall be measured using the appropriate ASTM method as required by the executive secretary. Records for used oil consumption and test reports are to be kept for all periods when fuel-burning equipment is in operation. The records shall be kept on site and made available to the executive secretary or the executive secretary's



representative upon request. Records must be kept for a three-year period.

#### **R307-401-15. Air Strippers and Soil Venting Projects.**

(1) The owner or operator of an air stripper or soil venting system that is used to remediate contaminated groundwater or soil is exempt from the notice of intent and approval order requirements of R307-401-5 through 8 if the following conditions are met:

(a) the estimated total air emissions of volatile organic compounds from a given project are less than the de minimis emissions listed in R307-401-9(1)(a), and

(b) the level of any one hazardous air pollutant or any combination of hazardous air pollutants is below the levels listed in R307-410-5(1)(d).

(2) The owner or operator shall submit documentation that the project meets the exemption requirements in (1) above to the executive secretary prior to beginning the remediation project.

(3) After beginning the soil remediation project, the owner or operator shall submit emissions information to the executive secretary to verify that the emission rates of the volatile organic compounds and hazardous air pollutants in (1) above are not exceeded. Emissions estimates of volatile organic compounds and hazardous air pollutants shall be based on test data obtained in accordance with the test method in the EPA document SW-846, Test #8020 or #8021 or other test or monitoring method approved by the executive secretary. Results of the test and calculated annual quantity of emissions of volatile organic compounds and hazardous air pollutants shall be submitted to the executive secretary within one month of sampling. The test samples shall be drawn on intervals of no less than twenty-eight days and no more than thirty-one days (i.e., monthly) for the first quarter, quarterly for the first year, and semi-annually thereafter or as determined necessary by the executive secretary.

(4) The following control devices do not require a notice of intent or approval order when used in relation to an air stripper or soil venting project exempted under R307-401-15:

(a) thermodestruction unit with a rated input capacity of less than five million BTU per hour using no other auxiliary fuel than natural gas or LPG, or

(b) carbon adsorption unit.

#### **R307-401-16. De minimis Emissions From Soil Aeration Projects.**

An owner or operator of a soil remediation project is not subject to the notice of intent and approval order requirements of R307-401-5 through 8 when soil aeration or land farming is used to conduct a soil remediation, if the owner or operator submits the following information to the executive secretary prior to beginning the remediation project:

(1) documentation that the estimated total air emissions of volatile organic compounds, using an appropriate sampling method, from the project are less than the de minimis emissions listed in R307-401-9(1)(a);

(2) documentation that the levels of any one hazardous air pollutant or any combination of hazardous air pollutants are less than the levels in R307-410-5(1)(d); and

(3) the location of the remediation and where the remediated material originated.

#### **R307-401-17. Temporary Relocation.**

The owner or operator of a stationary source previously approved under R307-401 may temporarily relocate and operate the stationary source at any site for up to 180 working days in any calendar year not to exceed 365 consecutive days, starting from the initial relocation date. The executive secretary will evaluate the expected emissions impact at the site and compliance with applicable Title R307 rules as the bases for determining if approval for temporary relocation may be granted. Records of the working days at each site, consecutive days at each site, and actual production rate shall be submitted to the executive secretary at the end of each 180 calendar days. These records shall also be kept on site by the owner or operator for the entire project, and be made available for review to the executive secretary as requested. R307-401-7, Public Notice, does not apply to temporary relocations under R307-401-17.

#### **R307-401-18. Eighteen Month Review.**

Approval orders issued by the executive secretary in accordance with the provisions of R307-401 will be reviewed eighteen months after the date of issuance to determine the status of construction, installation, modification, relocation or establishment. If a continuous program of construction, installation, modification, relocation or establishment is not proceeding, the executive secretary may revoke the approval order.

#### **R307-401-19. Analysis of Alternatives.**

The owner or operator of a major new source or major modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area must, in addition to the requirements in R307-401, submit with the notice of intent an adequate analysis of alternative sites, sizes, production processes, and environmental control techniques for such proposed source which demonstrates that benefits of the proposed source significantly outweigh the environmental and social costs imposed as a result of its location, construction, or modification. The executive secretary shall review the analysis. The analysis and the executive secretary's comments shall be subject to public comment as required by R307-401-7. The preceding shall also apply in Salt Lake and Davis Counties for new major sources or modifications which are



considered major for precursors of ozone, including volatile organic compounds and nitrogen oxides.

**R307-401-20. Relaxation of Limitations.**

At a time that a source or modification to be located in a nonattainment or maintenance area or which would impact a nonattainment or maintenance area becomes a major source or major modification because of a relaxation of any enforceable limitation which was established after August 7, 1980, on the capacity of a source or modification otherwise to emit a pollutant, such as a restriction on the hours of operation, then the preconstruction requirements shall apply to the source as though construction had not yet commenced on the source or modification.

**KEY: air pollution, permit, approval order**

**DATE of Enactment or Last Substantive**

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